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Supreme Court, U.S.
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No. 00-1460

In The

Supreme Court of the United States

ROGER BATTLE,

Petitioner,

vs.

JAMES LeBLANC, Warden,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent respectfully files this brief in opposition to the Petition for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE CASE

Petitioner, Roger Battle, is a state court prisoner currently incarcerated in the Dixon Correctional Center in Jackson, Louisiana. On October 23, 1992, a jury found the petitioner guilty of one count of attempted aggravated rape, a violation of LSA-R.S. 14:27:42, and one count of aggravated burglary, a violation of LSA-R.S. 14:60. The petitioner was sentenced to serve 50 years for Count I, the attempted aggravated rape count, and 30 years for Count II, the aggravated burglary count. On appeal, the Louisiana Fifth Circuit Court of Appeal affirmed the petitioner's conviction; however, the court set aside the sentence for aggravated burglary and remanded the matter for resentencing in accordance with LSA-R.S. 14:60. *State v. Battle*, 93-900 (La.App. 5 Cir. 3/29/94); 635 So.2d 337. An application for supervisory writs to the Louisiana Supreme Court was denied. *State v. Battle*, 94-1592 (La. 10/28/94); 644 So.2d 649. The petitioner sought collateral relief by filing a *Uniform Application for Post-Conviction Relief* in the 24th Judicial District Court, Parish of Jefferson. That court denied relief and the petitioner was unsuccessful in seeking writs of review in the state court of appeal and the Louisiana Supreme Court.

The petitioner's federal application for habeas corpus relief was filed in the United States District Court for the Eastern District of Louisiana on September 20, 1999. On

April 6, 2000, United States Magistrate Judge Louis Moore, Jr. issued a Report and Recommendation in which he found the application for habeas corpus was filed timely. Magistrate Judge Moore addressed each of the petitioner's claims in great detail and he denied the application for habeas corpus relief after finding no merit to any of the petitioner's claims. Federal District Judge Martin L.C. Feldman issued a Judgment denying the application both on the merits as well as on procedural grounds (i.e. timeliness). Judge Feldman adopted that portion of the Report and Recommendation which denied the petition on the merits. However, Judge Feldman reversed the Magistrate Judge's ruling as to timeliness, holding that the petition was untimely. The petitioner sought a Certificate of Appealability which was denied in both the federal district court and the United States Court of Appeals for the Fifth Circuit.

REASONS FOR DENYING THE WRIT

A. ANY ACTION BY THIS HONORABLE COURT WOULD AMOUNT TO AN ADVISORY OPINION.

The petitioner contends that the sole issue before this Honorable Court is whether the district court erred in holding that he filed his petition untimely in the United States District Court for the Eastern District of Louisiana. Specifically, the petitioner contends that the lower courts erred in defining the term "pendency" as used in the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. 104-132, 110 Stat. 1214, codified at 28 U.S.C. § 2244. Additionally, the petitioner argues that the court of appeals incorrectly applied the Rules of the Louisiana Supreme Court in calculating timeliness.

It is the respondent's argument that any ruling by this Court on the timeliness issue would merely amount to an advisory opinion. There is no possibility of judicial relief from the granting of certiorari. The petitioner's sole issue before this Court is whether the lower courts erred in determining that his application for habeas corpus relief was filed untimely in the federal district court. However, the petitioner fails to recognize that his application was also denied on the merits. The Magistrate Judge issued a 41 page Report and Recommendation in which he thoroughly addressed each of the petitioner's claims and determined that they were without merit.[1] Subsequently, the federal district judge issued a Judgment denying the application on the merits by adopting the reasons enunciated by the magistrate. Therefore, even if this Court were to grant relief and hold that the petition was filed in a timely manner, the fact remains that the petition was also denied on the merits. For that reason, the Judgment of the federal district court denying relief would still stand, and there would be no change in the petitioner's status.

It is well recognized that this Court has consistently refused to issue advisory opinions. *See, e.g., Mistretta v. U.S.*, 488 U.S. 362, 385, 109 S.Ct. 647, 662, 102 L.Ed.2d 714 (1989). In *Montana v. Imlay*, 506 U.S. 5, 113 S.Ct. 444, 121 L.Ed.2d 310 (1992), this Court issued a Per Curiam dismissing a writ which it determined was improvidently

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[1] Of the 41 page Report and Recommendation, approximately 34 pages were intentionally omitted from Appendix L in the Petition. For this reason, the respondent refers this Court to its Lodging Appendix which includes a complete copy of the Report and Recommendation (*See also*, respondent's argument in Section B).

granted. Although this Court gave no reasons for dismissing the writ other than "improvidently granted", Justice Stevens' concurrence eloquently demonstrated this Court's reasoning in its reluctance to issue advisory opinions:

> Thus, no matter which party might prevail in this Court, the respondent's term of imprisonment will be the same. At oral argument, neither counsel identified any way in which the interests of his client would be advanced by a favorable decision on the merits – except, of course, for the potential benefit that might flow from an advisory opinion. Because it is not the business of this Court to render such opinions, it wisely decides to dismiss a petition that should not have been granted in the first place.

Montana v. Imlay, 506 U.S. at 6, 113 S.Ct. at 445 (per curiam) (Stevens, J. concurring).

In the instant case, because the federal district court's Judgment denied the application for habeas corpus relief by rejecting the merits of the petitioner's claims, the petitioner cannot identify any way in which his interests would be advanced by a favorable decision on the timeliness issue. The Judgment denying relief would still stand. Accordingly, the granting of relief on this issue would be an exercise in futility.

B. THE PETITIONER FAILED TO INCLUDE THE ENTIRE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION IN HIS PETITION

The petitioner included the Magistrate Judge's Report and Recommendation as Appendix L in his petition to this Court. However, the petitioner only included selected portions; and he omitted approximately 34 pages

from this document. These omitted pages contain not only the facts supporting the petitioner's conviction, but they also contain the Magistrate Judge's entire reasoning concerning his denial of relief on the merits of the petitioner's claims. Because the federal district judge's Judgment adopted that portion of the Magistrate Judge's Report and Recommendation denying the petition on the merits, and that portion was omitted in Appendix L, the petitioner has prevented this Court from having a complete understanding of the district court's Judgment. Accordingly, the respondent includes a complete copy of the Report and Recommendation as a Lodging Appendix in order for this Court to make a determination as to whether the granting of relief would amount to an advisory opinion.

CONCLUSION

For the foregoing reasons, the respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully Submitted,

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